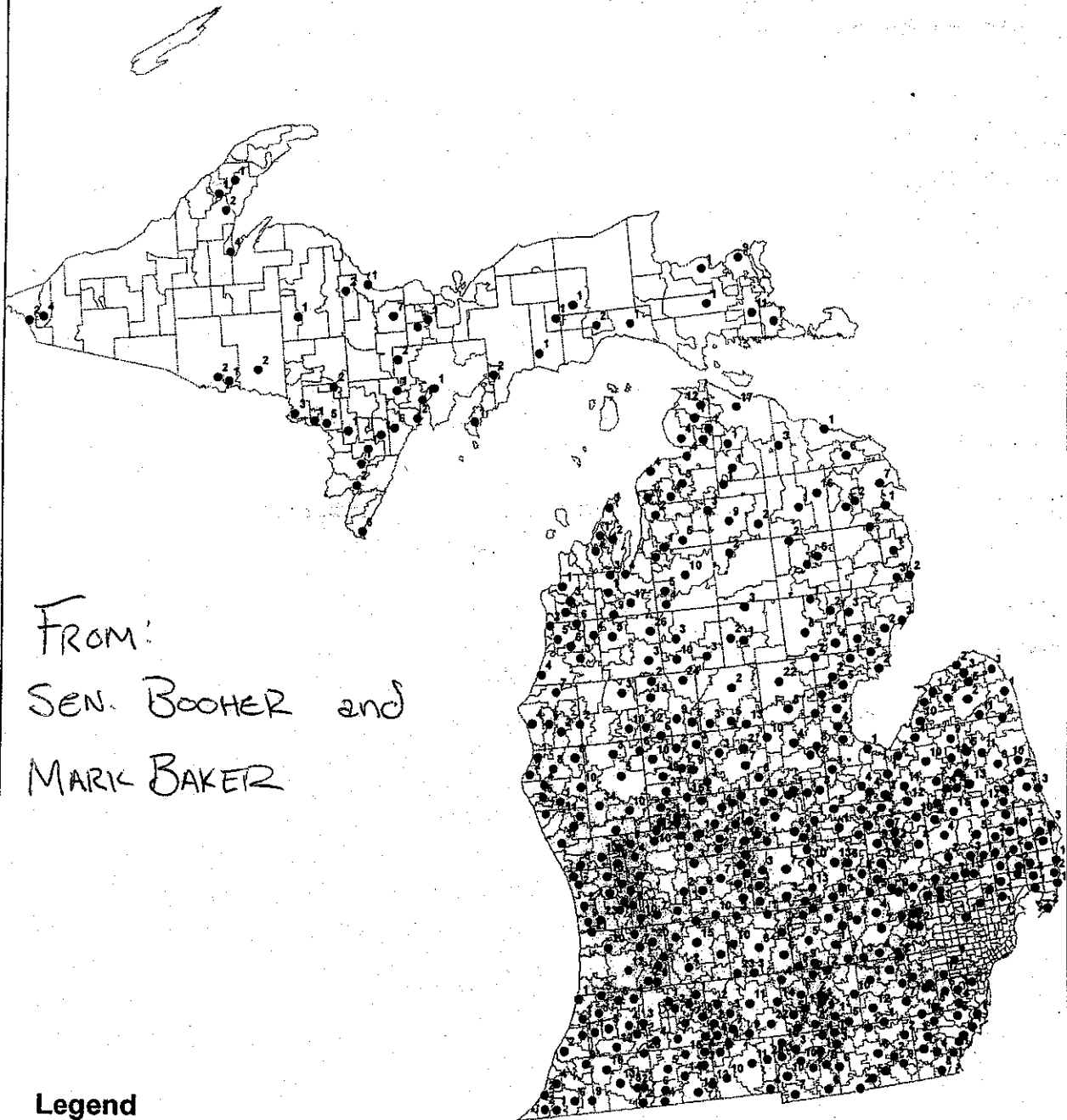


Number of Hog Operations by Zip Code

2007 Census of Agriculture



Legend

• Zip Code With Hog Operation(s)

— Zip Code Boundaries



Invasive Species Order Amendment No. 1 of 2011 took effect on October 8, 2011. The MDNR has reiterated that under its phased compliance protocol, it will defer determinations of compliance with the prohibition added by Invasive Species Order Amendment No. 1 of 2010 and Invasive Species Order Amendment No. 1 of 2011 until after March 31, 2012.

Request for Declaratory Ruling

The Petitioner requests a declaratory ruling as follows:

"Pursuant to MCL § 24.263, "an agency may issue a declaratory ruling as to the applicability to an actual state of facts of ... [an] order of the agency." Here, the actual state of facts are thus: MDNR has issued the ISO which makes it unlawful to possess the above described breeds of swine "or of a hybrid or genetically engineered variant" of those breeds. MAFA's members breed and raise captive swine, and, therefore, they are requesting that MDNR specify and declare, by way of a declaratory ruling, the exact standards that MDNR will be utilizing to determine the hybrid, genetic variants and offspring of prohibited swine. Specifically, what kind of qualitative testing will the MDNR be conducting and what results will determine if a specific animal is a hybrid, genetic variant or offspring of the prohibited swine listed in the ISO?"

Response

Based upon the recommendations of MDNR staff with relevant experience and who have reviewed available scientific literature and consulted with other scientists, the MDNR has developed the following approach to the identification of animals prohibited under the ISO.

There are two means by which a species can be correctly identified: by genotype or by phenotype. Genotype refers to the unique genetic make-up of the species. Phenotype refers to the *expression* of those genes, which results in specific physical, biochemical, or behavioral characteristics.

In its enforcement of the ISO and Part 413 of 1994 PA 451, as amended, the MDNR will use phenotype to identify *Sus scrofa* and distinguish it from other species. Identification may include use of one or more of the following characteristics (Mayer and Brisbin 2008):

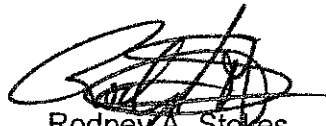
- Bristle-tip coloration: *Sus scrofa* exhibit bristle tips that are lighter in color (e.g., white, cream, or buff) than the rest of the hair shaft. This expression is most frequently observed across the dorsal portion and sides of the snout/face, and on the back and sides of the animal's body.
- Dark "point" coloration: *Sus scrofa* exhibit "points" (i.e., distal portions of the snout, ears, legs, and tail) that are dark brown to black in coloration, and lack light-colored tips on the bristles.

- Coat coloration: *Sus scrofa* exhibit a number of coat coloration patterns. Patterns most frequently observed among wild/feral/hybrid types are: wild/grizzled; solid black; solid red/brown; black and white spotted; black and red/brown spotted.
- Underfur: *Sus scrofa* exhibit the presence of underfur that is lighter in color (e.g., smoke gray to brown) than the overlying dark brown to black bristles/guard hairs.
- Juvenile coat pattern: Juvenile *Sus scrofa* exhibit striped coat patterns. This consists of a light grayish-tan to brown base coat, with a dark brown to black spinal stripe and three to four brown irregular longitudinal stripes with dark margins along the length of the body.
- Skeletal appearance: *Sus scrofa* skeletal structure is distinct. Structures include skull morphology, dorsal profile, and external body measurements including tail length, head-body length, hind foot length, ear length, snout length, and shoulder height.
- Tail structure: *Sus scrofa* exhibit straight tails. They contain the muscular structure to curl their tails if needed, but the tails are typically held straight. Hybrids of *Sus scrofa* exhibit either curly or straight tail structure.
- Ear structure: *Sus scrofa* exhibit erect ear structure. Hybrids of *Sus scrofa* exhibit either erect or folded/floppy ear structure.
- Other characteristics not currently known to the MDNR that are identified by the scientific community.

Ongoing advancements in science may provide additional phenotypic or genotypic tools to aid in the identification of *Sus scrofa*. The MDNR may use these tools as they become available.

The MDNR may use previous inspection data for a facility, as well as advertisements that specify the existence of swine at a facility, as factors for determining whether a facility should be inspected for prohibited swine subject to the ISO.

Issued on this 13th day of December, 2011



Rodney A. Stokes
Director

GUEST COLUMN: Niche farming under fire

DNR's order threatens farmers because of how their pigs look

Big Rapids Pioneer – 3/13/12

When Mark Baker retired from the Air Force after protecting our nation for 20 years, he never thought he would be fighting his own state government to protect his family's livelihood. Unfortunately, that's what is happening now.

Four years ago, Mark, his wife and six children began raising Mangalitsa and Russian swine at Baker's Green Acres farm. The breeds are two of the many types of heritage hogs and there is a tremendous niche market for animals like these pigs.



INVASIVE SPECIES?: Department of Natural Resources officials have placed Mangalitsa pigs, amongst others, on a list of invasive species, even as lawmakers and farmers dispute the order. (Courtesy photo)

However, Mark and other farmers who raise heritage swine are being told by the Michigan Department of Natural Resources that they must get rid of them by April 1.

In December 2010, the DNR issued an invasive species order (ISO) to make certain types of swine an invasive species, which prohibits farmers from raising them. The order became effective Oct. 8, 2011, and affects all heritage hogs in Michigan. Even potbellied pigs, which are often raised as pets, may now be considered an invasive species in Michigan.

It's ironic that just a week after the ISO's effective date Traverse City hosted Pigstock, a four-day course about Michigan Mangalitsa pigs. The course taught about breeding and husbandry practices, methods of processing and charcuterie. Chefs from throughout the Midwest attended

the conference. Now, the DNR's order jeopardizes not only this conference, but the economic opportunities for small farm operations that raise heritage pigs.

The DNR's thinking is irrational. The department says we must ban certain pigs because the state has a feral hog problem (pigs running at-large or outside a fence). But since all pigs outside of a fence are feral and the DNR cannot genetically differentiate between swine, the department decided to ban certain pigs in Michigan simply due to their appearance.

In December 2011, the DNR issued a ruling describing the characteristics that pigs cannot have or they will be considered an invasive species. Hence the Mangalitsa, along with many other breeds of swine that look different, are now considered invasive.

The politics of all of this – let's call it pig politics – has been nothing less than amazing. The small farmers I have talked to wonder why the DNR is singling out their pigs and is joining forces with the Michigan Pork Producers Association on this issue. They believe the association wants all pigs to be raised in confinement facilities, and the best way to achieve that is to make it illegal to raise certain swine, especially those offering alternatives to the white pork raised in confinement.

In a Nov. 2, 2010, Traverse City Record-Eagle story, Agriculture Commissioner Don Coe said the Mangalitsa pigs can be grown locally "not in large feedlots, but humanely, on small farms, the way they used to be."

I believe it was a mistake for the DNR to involve itself in an agricultural issue that is not associated whatsoever with its mission. The DNR is charged with management of game and wildlife owned by the public – not the regulation of privately-owned animals. That is the responsibility of the Michigan Department of Agriculture and Rural Development.

My legislative colleagues and I have repeatedly asked the DNR to revise the ISO so it will not apply to pigs that are raised by people. We specifically asked DNR Director Rodney Stokes to rescind the order or revise it to apply only to pigs running wild outside a fence. Gov. Rick Snyder also could require it to be changed. Unfortunately, neither has taken action.

This is a perfect example of government and bureaucrats moving their own agendas forward with total disregard for the law, private property rights and the constitution.

Most importantly, it leaves Mark Baker – a man who has served our country honorably – little choice but to take action on his own to protect his family's way of life from an overzealous state department. Beyond Mark, there are farmers all across Michigan that the DNR dictates must depopulate their animals because they are invasive species simply based on looks.

I oppose the DNR's actions and will continue to stand up against this state government overreach.

I encourage you to contact Gov. Snyder and DNR Director Stokes to express your opposition to this type of government behavior. Ask them to rescind this order and stand up for the small businesses that are providing choice in Michigan's food industry.

Sen. Darwin Booher represents Michigan's 35th Senate District.

Farm Regulation in Michigan Could Potentially Harm Indiana Farmers

Originally printed at <http://www.indianasnewscenter.com/news/local/Farm-Regulation-in-Michigan-Could-Potentially-Harm-Indiana-Farmers-144160855.html>

By Rachel Martin
March 25, 2012

ROANOKE, Ind. (Indiana's NewsCenter) – The Michigan DNR is expanding its Invasive Species Act to include farmers and the swine they raise. A local farmer says it could affect Indiana as well as the culinary industry. –

Eshelman says he's giving Indiana a "heads-up"

"It seems unfair and unjust," said Eshelman. "We wanted our customers to know what was going on in the food industry and also a little head's up in Indiana to make sure that kind of law doesn't come here and start infringing upon the local food movement and discouraging farmers to grow great foods like ours, and consumer who are interested in local foods."

In Michigan, the Department of Natural Resources (DNR) has now imposed the Invasive Species Act, issued in December 2010, on farmers. That means by April 1, farmers must destroy heritage, or "wild", breeds of swine or they will be violating the law.

Eshelman owns Joseph Decuis farm and restaurant in Roanoke, Ind., an establishment known for its top quality beef and pork.

"For the restaurant we serve foods that we raise on our farm, but also we source foods from like-minded farms," Eshelman said. "One of our like-minded farmers is under attack, and actually he'll be put out of business."

That farmer is Eshelman's friend, Mark Baker in Marion, Mich. Baker retired from the Air Force after 20 years. His State Senator, Darwin Booher, says, "after protecting our nation for 20 years, he never thought he would be fighting his own state

government to protect his family's livelihood." Baker, like Eshelman, raises a species the Michigan DNR considers "feral"—the Mangalitsa pig.

The Michigan DNR wants to outlaw pigs that fit the description of "wild" or "feral" pigs, like a dark wooly coat, erect ears, and a straight tail—which happens to fit the description of the Mangalitsa pig.

"Mangalitsa is not a feral pig," Eshelman said. "It's one of the most high sought after pork products in the world. It's kind of like calling Secretariat, the race horse, a mule or a wild horse, and you're going to get rid of wild horses. It's just ridiculous."

Aaron Butts, Executive Chef at Joseph Decuis, says this kind of regulation on Indiana would not only hurt farmers, but also the culinary industry.

He says if Indiana's DNR implemented that regulation, Joseph Decuis would have to outsource pork, most likely from confined animal farming operations or CAFOs—which are exempt from Michigan's Invasive Species Order.

"It's definitely a big part of what we're known for. We're known for quality and how we source our ingredients, and the farm is a huge part of the restaurant. People respect the fact that when they come in they know where their food's coming from." Butts said. "I could get a lot of pork for a lot less cost, but it's not going to be good, and our customers aren't going to come for that. They're not going to settle for that."

Eshelman and Butts say they have theories on why Michigan is imposing such laws.

"I think it started out as feral pigs are out in the wild and they tear up farms and crops. There are parts of the country where that's an issue, so you really have to do something about that," Eshelman said.

"With Michigan, it seems the government is trying to move them in opposite direction of where we should be going," Butts said. "They should be supporting the local agriculture, preserving these heritage swine breeds. They're [farmers] doing everything right, and they're trying to say 'no you can't do that anymore'."

But, could a law like that be regulated in Indiana?

"The Indiana Department of Agriculture has been awesome to work with and they really try to foster and push locally raised foods and family farms, so I would be surprised but you never know," said Eshelman. "But what would happen is, they're just going to wipe out a whole lot of family farms."

Indiana's NewsCenter tried contacting Michigan and Indiana DNR, but no one was available for comment Sunday.

To learn more about what's going on in Michigan and read Mark Baker's story visit "Baker's Green Acres" under News Links on our homepage.



FRANK NICELEY
STATE REPRESENTATIVE
17TH DISTRICT

108 WAR MEMORIAL BUILDING
NASHVILLE, TENNESSEE 37243-0117
(615) 741-4419

1023 CREEK ROAD
STRAWBERRY PLAINS, TN 37871
(865) 661-4419

House of Representatives State of Tennessee

NASHVILLE

MEMBER OF COMMITTEES
CHAIRMAN OF AGRICULTURE
CONSERVATION & ENVIRONMENT
CALENDAR & RULES

MEMBER OF SUBCOMMITTEES
AGRICULTURE
CONSERVATION & ENVIRONMENT

March 20, 2012

Kevin Daley, Chairman
Michigan House Agriculture Committee
P.O. Box 30014
Lansing, MI 48909-7514
KevinDaley@house.mi.gov

Dear Representative Daley:

I have been closely following with interest and great concern the actions taken by the Department of Natural Resources in your state regarding the implementation of an Invasive Species Order (ISO) that purports to single out specie of swine by phenotype as illegal. I wanted to let you know I strongly believe this is a very dangerous precedent that if this order is actually implemented by your state, could potentially have wide-spread negative consequences to agriculture in other states.

When I first learned about the Michigan DNR attempting to implement a regulation to prohibit ownership of certain swine living under human husbandry, I didn't believe it. I did not think it was even possible for a state DNR to have the statutory authority to govern privately owned livestock. However, I have since learned that the Michigan DNR has published a Declaratory Ruling listing certain characteristics of swine that apparently will be treated as "*Invasive Species*" in the State of Michigan.

In the State of Tennessee, and I am sure this must be true in your state; agriculture is very diverse and important industry. Those making a living at it must not only work hard, they must also be smart and innovative. Raising specialty breeds of animals, even developing hunting preserve operations providing an opportunity for people to harvest animals themselves, are very important to our agricultural economy especially when not everyone is able to farm on a large scale.

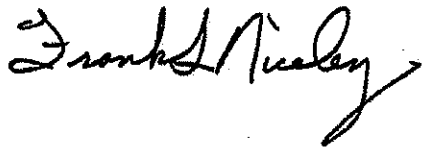
I sincerely believe the actions taken by your DNR not only threaten innovative specialty farm operations in Michigan, but by your states example and published Invasive Specie Order and Declaratory Ruling, it will also needlessly facilitate debate and possible negative consequences

for agriculture in other states by questioning what breeds of animals can be raised, how they are raised and what method of harvest farms choose to utilize.

I would like to ask you and your colleagues in the Michigan Legislature to aggressively and immediately call for the repeal of the Michigan DNR's Invasive Species Order. I would also recommend that the Michigan Legislature as quickly as possible remove whatever authority the Department of Natural Resource has to govern farm animals.

If I can help in any way, please contact me.

Sincerely,

A handwritten signature in black ink, reading "Frank Niceley". The signature is written in a cursive style with a long, sweeping underline.

Rep. Frank Niceley
Tennessee House Agriculture Committee Chairman
108 War Memorial Building
Nashville, TN 37243
(615) 741-4419



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF NATURAL RESOURCES
LANSING



RODNEY A. STOKES
DIRECTOR

February 8, 2012

The Honorable Edward McBroom
State Representative
P.O. Box 30014
Lansing, Michigan 48909-7514

Dear Representative McBroom:


The Department received your letter dated February 1, 2012, in which you request further clarification regarding the Invasive Species Order Amendment #1 of 2011 (the Order). Presumably you received the previous letter from the Department which included the Declaratory Ruling (Ruling) written for invasive swine identification and enforcement of the Order.

The Ruling outlines how the prohibited species will be identified; by phenotype, not by genotype. Any swine, whether pure or hybrid, exhibiting these characteristics are prohibited. All people in the state of Michigan are subject to this prohibition regardless of their use of this type of swine. Your constituents that wish to purchase swine can look at the characteristics listed in the Ruling and choose swine that do not exhibit the prohibited characteristics.

Indemnification cannot be paid to prohibited swine that are destroyed. Indemnification in statute is for livestock and invasive species are not livestock, and are therefore, not eligible for indemnification.

The cost of enforcement for the Order will depend on the level of compliance with the Order by April 1, 2012.

Sincerely,


Rodney A. Stokes
Director
517-373-2329

cc: Dr. Kelley D. Smith, Acting Natural Resources Deputy, DNR
Legislative Liaison, DNR



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF NATURAL RESOURCES
LANSING



RODNEY A. STOKES
DIRECTOR

March 8, 2012

Mr. Jason Foscolo, General Counsel
American Mangalitsa Breeders Association
315 Mattison Reservoir Avenue
Branchville, New Jersey 07826

Dear Mr. Foscolo:

Thank you for your letter dated February 23, 2012, regarding Invasive Species Order Amendment No. 1 of 2011 (Invasive Species Order). The Department of Natural Resources (DNR) understands your concern regarding purebred, heritage breed Mangalitsa swine and the application of the Invasive Species Order. ~~The Invasive Species Order and subsequent Declaratory Ruling were not intended to affect purebred Mangalitsa swine.~~ It is the DNR's understanding that purebred Mangalitsa swine do not exhibit characteristics listed in the Declaratory Ruling, other than ~~potentially striped piglets.~~ The Invasive Species Order would not prohibit purebred Mangalitsa swine based solely on this characteristic.

Contrary to the contention in your letter, the Invasive Species Order is not aimed solely at "feral" swine. The Invasive Species Order prohibits possession of:

Wild boar, wild hog, wild swine, feral pig, feral hog, feral swine, Old world swine, razorback, Eurasian wild boar, Russian wild boar (*Sus scrofa Linnaeus*)

Additionally, the Invasive Species Order prohibits possession of any hybrid or genetic variant of the prohibited swine.

In response to a request from the Michigan Animal Farmer's Association, the DNR issued the December 13, 2011 Declaratory Ruling that describes how animals subject to the Invasive Species Order will be identified. The Declaratory Ruling outlines phenotypic characteristics of *Sus scrofa* swine, most notably referred to as Russian boars or Eurasian wild boars. The phenotypic characteristics listed in the Declaratory Ruling will be used by the DNR to identify swine prohibited by the Invasive Species Order.

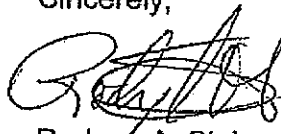
Your letter further states that Mangalitsa breeders were not part of the public notice process for the Invasive Species Order. I respectfully disagree. The DNR and its predecessor agency, the Department of Natural Resources and Environment, provided multiple public notices of the Invasive Species Order, both at public meetings of the Natural Resources Commission and in news releases. The DNR has reached out to

Mr. Jason Foscolo
Page 2
March 8, 2012

individuals that it knew may be affected by the Invasive Species Order, but DNR had no way of specifically identifying Mangalitsa breeders. However, general public notice, consistent with DNR policies, was given for all of the public meetings held by the DNR on the Invasive Species Order, Declaratory Ruling, and enforcement of the Invasive Species Order.

To date, all of the Mangalitsa breeders the DNR has spoken with do not have swine subject to the Invasive Species Order. If any of your members have questions as to whether the swine they possess are subject to the Invasive Species Order, DNR staff welcomes the opportunity to visit their facilities and make that determination in advance of April 1, 2012.

Sincerely,

A handwritten signature in black ink, appearing to read "Rodney A. Stokes", written over a horizontal line.

Rodney A. Stokes
Director
517-373-2329